

A. PUBLIC RECORDS STATUTES

As noted in the Introduction and Glossary of Terms, your state likely recognizes a distinction between "public records," which may include correspondence, office records, personnel records, etc., and "government publications," which may be compiled as a means to disseminate government information of educational or public interest. This section addresses statutes that concern public records and, in particular, those that focus on record keeping requirements and retention. The compilation of statutes for your state may combine record keeping requirements with public access provisions or freedom of information laws. Those statutes are addressed in Sections B & C.

1. Does your state have "public records statutes," as referred to in the paragraph above?

Yes
 No

a. If "Yes," cite your state's public records statutes and the administrative regulations that supplement them.

TENN. CODE ANN. §§ 10-7-301 to 308, 501-511 (1999 & Supp. 2001)¹

TENN. COMP. R. & REGS. 1210-1-2 to 1210-1-5 (2002)

TENN. CODE ANN. §§ 10-7-101 to 210, and 401 to 414 (1999 & Supp. 2001).

TENN. CODE ANN. §10-7-301 defines public records in the following manner:

"Public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, **electronic data processing files and output**, films, sound recordings, or other material, **regardless of physical form or characteristics** made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency;

b. If "No," skip this whole section.

Additional comments:

TENN. CODE ANN. §§ 10-7-101 to 210 and 401 to 414 apply almost exclusively to public records created and maintained at the County level of government, primarily court and land records. These statutes specify how records are to be maintained, allow for the use of digital media to create and preserve public records (TENN. CODE ANN § 10-7-121), specify that county officials may allow remote electronic access to records for a fee (§ 123), direct county clerks and other officials to index public records (§ 201), mandate the creation of county Public Records Commissions (§ 401), specify when and how originals of public records may be destroyed and that the public must have the ability to access public records (§ 406), and allow the State Library and Archive to take custody of any records deemed to be of permanent value (§ 413).

2. The public records statutes/regulations apply to which of the following branches?

¹ These citations include statutes that focus on record keeping and retention and those that focus on access to public records. The overall statutory scheme makes it difficult to extract one statute, or even an entire part, from the title on public records, and have it make much sense out of context.

- Executive
- Legislative
- Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

§ 10-7-301 to 308, which authorizes the creation of the Public Records Commission and specifies the circumstances under which public records may be destroyed, applies to “agencies” of the state government except the legislature. 10-7-301(1) defines “agency” as “any department, division, board, bureau, commission, or other separate unit of government including the legislative branch and the judicial branch . . . provided, however, that for purposes of this part only, ‘agency’ does not include the legislative branch.”² Furthermore, section 10-7-303, which controls the disposition and preservation of records, explicitly excludes legislative records. TENN. CODE ANN. §§ 10-7-303(g) (Supp. 2001). The executive branch is neither specifically included or excluded, except insofar as its administrative agencies are included. However, section 10-7-503, which mandates keeping state records open to public inspection, does not exclude legislative records.

Additional comments:

As 10-7-301 and 304 were originally enacted, they did apply to the legislative branch as well as the judicial branch. Later amendments removed the legislative branch from the reach of the statute.

3. Cite to public records statutes/regulations where “public record” is defined.

TENN. CODE ANN. §§ 10-7-101 (applies only to specific documents created and maintained at the County level of government), 10-7-301(6) (applies to state-level records), 10-7-403 (applies to county-level records only).

Additional comments:

4. Do the public records statutes/regulations address electronic records separately vis-à-vis print records?

- Yes
- No

a. If “Yes,” cite to and briefly discuss statutes/regulations addressing electronic records; how are they treated differently?

TENN. CODE ANN. § 10-7-121(a)(1)(C) allows county governments to keep public records in a computer file only when daily copies of computer-based records are made, and copies more than a week old are stored at a location away from the building where the original is made. Furthermore, computer records are allowed only when paper copies can be made available when needed or

² In the Tennessee Code Annotated, a “part” refers to the initial numeral of the third portion of the numerical citation. For example, 10-7-301, 302, 303, and 304 are all the same “part.”

requested. TENN. CODE ANN. § 10-7-121(a)(1)(D) (1999). Although the plain text of this statute appears to apply to all levels and facets of government, the Tennessee Attorney General has opined that it only applies to county government. TENN. ATTY. GEN. OP. 95-001 (Jan. 6, 1995). Records created at the state and municipal level may be created and kept in electronic format as long as all statutes and regulations governing the preservation and access of public records are complied with. TENN. ATTY. GEN. OP. 95-001 (Jan. 6, 1995).

Additional comments:

5. Do the public records statutes/regulations address retention of records?

Yes
 No

a. If "Yes," cite to and briefly summarize the retention provisions.

The Records Management Division of the Department of General Services directs the disposition of all state records. This division works with other agencies to create records and forms and in disposition scheduling. The head of any state department, commission, board, etc. may certify that records in his or her department have reached the end of the retention period established. At that point, the Public Records Commission may approve or disapprove the disposition of the records by majority vote. However, no public records may be scheduled for destruction without the unanimous approval of the voting members of the Public Records Commission. TENN. CODE ANN. § 10-7-303 (1999).

b. If "Yes," also cite to and discuss any provisions/regulations that address retention of electronic records; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

TENN. CODE ANN. § 10-7-303 specifically includes electronic records within its ambit. The Public Records Commission may authorize storage of public records in optical disk format. TENN. ATTY. GEN. OP. 95-001 (Jan. 6, 1995). State information kept in a computer must be preserved and made available even if the information is not kept in the precise form that a member of the public has referred to in a request. *The Tennessean v. Electric Power Bd.*, 979 S.W.2d 921 (Tenn. 1991).

Additional comments:

6. Do the public records statutes/regulations or other sources of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens' access to public records or acknowledge the state's responsibility to permanently maintain public records?

Yes
 No

a. If "Yes," cite to and provide relevant language.

The statute specifying procedures for obtaining access to public records where a request has been denied directs the courts of Tennessee to “give the fullest possible access to public records.” TENN. CODE ANN. § 10-7-505(d) (1999).

Additional comments:

7. Is a public records administrator, a public records commission or other officer/government entity responsible for administering the public records statutes/regulations?

Yes
 No

- a. If “Yes,” cite to applicable statutes/regulations and identify the responsible officer/government entity.

The Public Records Commission is created by TENN. CODE ANN. § 10-7-302 (1999)

- b. If “Yes,” also cite to and discuss any source of law requiring the responsible officer/government entity to permanently maintain government information; cite attorney general opinions, court decisions, and administrative rules or guidelines.

Additional comments:

At the county level of government, the county register is mandated by statute to preserve certain public records in a specified format. TENN. CODE ANN. §§ 10-7-101 to 210 (1999). Also, section 10-7-401 requires each county to create its own Public Records Commission to provide for the “orderly disposition” of public records.

8. Has any public records legislation/administrative regulation been proposed calling for “permanent public access” to electronic public records?

Yes
 No

- a. If “Yes,” cite to and briefly discuss the legislation/proposed regulation; what was the outcome?
b. If “Yes,” also cite to documents from the legislative or regulatory history.

Additional comments:

9. Has litigation under the public records statutes resulted from the state’s failure to “permanently” maintain a public record?

Yes
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

There have been a moderate number of reported cases about what constitutes a public record and when they are subject to inspection or disclosure. However, there have not been any reported cases regarding about records that were not “permanently” maintained (which is understandable, given that Tennessee law is flexible about what records must be maintained “permanently.”) The author could not obtain any definitive information about cases that may have been filed but which were not reported. All of the interviewees were asked about any such cases, and they all stated that they were not aware of any.

10. Discuss any unique circumstances in your state relevant to “permanent public access” of public records under public records statutes/regulations.

B. FREEDOM OF INFORMATION ACT

A state’s freedom of information act (or law) generally addresses public access to “public records.” As noted under Section A above, the compilation of statutes for your state may combine record keeping requirements and public access provisions.

1. Does your state have a “freedom of information act,” as referred to in the paragraph above?

Yes
 No

a. If “Yes,” cite your state’s freedom of information act (or law) statutes and the administrative regulations that supplement them.

TENN. CODE ANN. § 10-7-503 (1999 & Supp. 2001)

b. If “No,” skip this whole section.

Additional comments:

§10-7-503 creates the presumption that all government records (state, county, and municipal) are records which must be made available upon request by the public, “unless otherwise provided by state law.” §10-7-504 sets forth some of the exceptions to this rule, such as medical records and academic records. The *Tennessee Code Annotated* also has a useful cross-reference list at the end of section 504 to other statutes which deem certain types of records confidential. These include library records, results of HIV testing, child abuse reports, and many other types of records. §10-7-505 sets out procedures for obtaining redress when access is improperly denied.

2. The freedom of information act statutes/regulations apply to which of the following branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

“All state, county, and municipal records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee . . . unless otherwise provided by state law.”
TENN. CODE ANN. § 10-7-503(a) (1999 & Supp. 2001).

Additional comments:

Although the text of the statute does not explicitly say that it applies to all of the branches of government, it is so broadly drafted that it appears it must. In litigation, it has been assumed or concluded to apply to various different types of governmental agencies and entities.

3. Cite to freedom of information law statutes/regulations where “public record” is defined.

Additional comments:

“Public record” is not defined by statute or regulation in this specific context (the freedom of information laws). Instead, all government records are mandated as being open to public inspection unless they have been designated as confidential by state law. (See answer above). However, there has been some litigation with respect to the definition of a “public record” in the context of the freedom of information laws. The courts seem to have adopted the definition of “public record” used in § 10-7-301, the statute that creates the Public Records Commission, without much consideration or deliberation, even though 10-7-301 only applies to that part, and § 503 is not in the same part. A few courts have noted that “the five chapters of the Public Records Act ‘appear to us to be an all encompassing legislative attempt to cover all printed matter created or received by the government in its official capacity.’” *Griffin v. City of Knoxville*, 821 S.W.2d 921, 923 (Tenn. 1991), quoting *Board of Education v. Memphis Pub. Co.*, 585 S.W.2d 629, 630 (Tenn. App. 1979).

The definition from §10-7-301 is: “all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or by ordinance or in connection with the transaction of official business by any governmental agency.”

4. Do the freedom of information act statutes/regulations address electronic records separately vis-à-vis print records?

Yes
 No

- a. If “Yes,” discuss whether the freedom of information act statutes/regulations had been amended at any time to cover electronic records; cite to and provide amending language.
- b. If “Yes,” also cite to and briefly discuss statutes/regulations addressing electronic records; how are they treated differently?

Additional comments:

5. Do any freedom of information act statutes/regulations assure “permanent public access” of electronic public records?

Yes
 No

- a. If "Yes," cite to and discuss any provisions/regulations that address "permanent public access"; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

Although permanent public access to public records is not explicitly guaranteed, electronic records are governed by/included in state laws that both require public access and a unanimous vote of the Public Records Commission before any public records can be destroyed (with the exception of legislative documents).

6. Do the freedom of information act statutes/regulations or other sources of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens' access to public records or acknowledge the state's responsibility to permanently maintain public records?

Yes
 No

- a. If "Yes," cite to and provide relevant language.

The statute affording judicial relief if access is denied provides that "this section shall be broadly construed so as to give the fullest possible public access to public records." TENN. CODE ANN. § 10-7-505(d) (1999).

Additional comments:

Although there is no one statute in Tennessee acknowledging a policy or responsibility to permanently maintain public records, the statutory scheme, as a whole, favors it, with the exception of legislative records. No public record, other than legislative records, may be destroyed without the unanimous consent of the Public Records Commission. TENN. CODE ANN. § 10-7-303(d) (1999 & Supp. 2001). Also see the Tennessee Office for Information Resources Information Technology Policy 12.00, which reads "The State of Tennessee will aggressively and cost-effectively use information technology, as well as emerging technologies, in order to provide efficient, effective, equal, and universal citizen access to public information as defined by law." (Available at <http://www.state.tn.us/finance/oir/policy/p12.htm>).

7. Has any freedom of information legislation/administrative regulation been proposed calling for "permanent public access" of electronic public records?

Yes
 No

- a. If "Yes," cite to and briefly discuss the legislation/proposed regulation; what was the outcome?
b. If "Yes," also cite to documents from the legislative or regulatory history.

Additional comments:

8. Has litigation under the freedom of information act resulted from the state's failure to "permanently" maintain a public record?

Yes
 No

- a. If "Yes," cite to and briefly discuss each case.

Additional comments:

9. Discuss any unique circumstances in your state relevant to "permanent public access" of public records under freedom of information act statutes/regulations.

C. PUBLIC ACCESS LAWS

The term "public access law" is intended to be a catchall for all other statutes that address the permanency and public accessibility of government information. The type of law appropriately falling under this section is most likely to be a statute that governs availability and access of *government publications*. An example of such a statute is the "Free Public Access to the Code of Maryland Regulations Act," whose title alone explains much about its purpose.

1. Does your state have any "public access laws," as referred to in the paragraph above?

Yes
 No

- a. If "Yes," cite each of your state's public access law statutes and the administrative regulations that supplement them.
- b. If "No," skip this whole section.

Additional comments: See discussion in Section I, Depository Library program.

2. For each public access law, specify the branches to which it applies.

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

- a. Briefly explain your answer and cite to applicable statutes/regulations.

Additional comments:

3. For each public access law, cite to and discuss provisions/regulations addressing the particular form of government information addressed by the law.

Additional comments:

4. For each public access law, do the applicable statutes/regulations address electronic information separately vis-à-vis print information?

Yes
 No

- a. If “Yes,” cite to and briefly discuss statutes/regulations addressing electronic information; how is it treated differently?

Additional comments:

5. For each public access law, do the applicable statutes/regulations specifically address permanency of the information?

Yes
 No

- a. If “Yes,” for each public access law, cite to and briefly discuss the permanency provisions.

Additional comments:

6. For each public access law, do the applicable statutes/regulations specifically address accessibility of information?

Yes
 No

- a. If “Yes,” cite to and briefly discuss the accessibility provisions.

Additional comments:

7. For each public access law, do the applicable statutes/regulations or any other source of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens’ access to government publications or acknowledge the state’s responsibility to permanently maintain government publications?

Yes
 No

- a. If “Yes,” cite to and provide relevant language.

Additional comments:

8. Has any public access legislation/administrative regulation been proposed calling for “permanent public access” of electronic publications?

Yes
 No

- a. If “Yes,” cite to and briefly discuss the legislation/proposed regulation; what was the outcome?
- b. If “Yes,” also cite to documents from the legislative or regulatory history.

Additional comments:

9. Has litigation under any public access law resulted from the state’s failure to “permanently” maintain a government publication?

Yes
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

10. Discuss any unique circumstances in your state relevant to “permanent public access” of government publications under public access laws.

D. STATE OFFICE FOR TECHNOLOGY AND CHIEF INFORMATION OFFICER

1. Does your state have an office for technology (or department of information technology, department of information service, or equivalent) and/or a chief information officer (or equivalent)?

Yes
 No

- a. If “Yes,” provide the complete official name for the office and/or officer; cite to the statute giving that information.

The Tennessee Office for Information Resources is a division within the Department of Finance & Administration. Although the Office is mentioned in the *Tennessee Code Annotated*, it is not created or mandated through the Code. The chief information officer is formally known as “Deputy Commissioner and Chief Information Officer.”

- b. If “No,” skip this whole section.

Additional comments:

2. Cite the “enabling” statute that created and defines the powers/responsibilities of the office/officer; when was the statute first enacted?

The Office for Information Resources was not created via the *Tennessee Code Annotated*. The Office for Information Resources is a division of the Department of Finance & Administration. The enabling statute for the Department of Finance & Administration is TENN. CODE ANN. § 4-3-1001 (1999), which was first enacted in 1959 (Acts 1959, ch. 9, § 2).

Additional comments:

Apparently the Office for Information Resources is a descendant of the “data processing section” of the Department of Finance & Administration, referenced in TENN. CODE ANN. § 4-3-1003(a)(4).

3. Does the office/officer have power to promulgate administrative regulations?

Yes
 No

a. If “Yes,” cite the body of administrative regulations promulgated by the office/officer.

Additional comments:

Since the Office for Information Resources is a division of a state department, it does not promulgate its own regulations. However, the Department of Finance & Administration could promulgate regulations regarding Information Resources, but has not done so.

4. The office/officer has jurisdiction over which branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

The Office for Information Resources is primarily involved with other state executive-branch agencies. However, the OIR is also mandated, by statute, to staff the Information Systems Council (in TENN. CODE ANN. § 4-3-5503 (1999)). The Information Systems Council develops policy guidelines for the overall management of the state’s information systems (including all branches of government).

Additional comments:

The following is a statement from the “State of Tennessee Information Systems Plan” regarding the structure of the administration of information systems in state government:

“The Information Systems Council (ISC) is charged with overseeing information technology for the State. The Commissioner of Finance and Administration chairs the ISC.

“The Office for Information Resources (OIR) provides direction, planning, resources, and coordination in managing the information technology needs of the State of Tennessee . . . [t]hey facilitate the use of information technology, provide technical direction and assistance to agencies for all distributive processing and network-related systems. Tennessee Office of Information Resources, State of Tennessee Information Systems Plan, located at:

<http://www.state.tn.us/finance/oir/prd/tennplan.htm>

(quoted material found at: <http://www.state.tn.us/finance/oir/prd/chpt2.pdf>)

5. Are the powers/responsibilities of the office/officer defined differently for electronic government information vis-à-vis print government information?

Yes
 No

- a. If "Yes," cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

The Office for Information Resources is concerned primarily with electronic data and computer systems, therefore there is no reason to define responsibilities specifically with respect to print government information.

6. Do applicable statutes/regulations for the office/officer set forth powers/responsibilities relating to "permanent public access" of government information?

Yes
 No

- a. If "Yes," cite to and discuss any provisions/regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

7. Does any relevant source of law acknowledge in any way the state's responsibility to permanently maintain government information?

Yes
 No

- a. If "Yes," briefly discuss that recognition; cite to and provide relevant language.

Additional comments:

However, as noted above, non-legislative government documents may not be destroyed without the unanimous consent of the Public Records Commission. TENN. CODE ANN. § 10-7-303 (1999).

8. Whether or not a supporting source of law can be identified, does the office/officer acknowledge responsibility to permanently maintain government information?

Yes
 No

- a. If "Yes," briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Additional comments:

9. Has the office/officer undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

10. Has any litigation involving the office/officer resulted from the state’s failure to “permanently” maintain government information?

Yes
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

11. Discuss any unique circumstances in your state relevant to the office for technology and/or chief information officer.

E. STATE TECHNOLOGY PLANS

1. Does your state have a current official information technology plan (or equivalent)?

Yes
 No

- a. If “Yes,” describe what government entity was responsible for creating the plan; cite to the source of its authority.

The state has several different plans, strategies, guides, etc., that are used for different purposes. The *State of Tennessee Information Systems Plan* is a yearly document which “provides an overview of the current status of information systems activities in Tennessee and presents each State agency’s long-range systems planning.” It is produced by the Department of Finance and Administration’s Office for Information Resources and is located at:

<http://www.state.tn.us/finance/oir/prd/tennplan.htm>

It applies to all state agencies in the executive branch of government. Although there is no specific mention of the Plan in the *Tennessee Code Annotated*, the Office for Information Resources cites to TENN. CODE ANN. § 4-3-5501 as the source of its authority (see <http://www.state.tn.us/finance/oir/policy/p07.htm>). However, it appears that § 4-3-5502 might be more appropriate, as it mandates that the Information Systems Council (which the Office for Information Resources staffs) shall “periodically review the overall effectiveness and efficiency with which the state’s information systems network is managed,” as well as developing policy guidelines for the management of the state’s information systems, including telecommunications

policies, long-range planning, etc. This plan appears to be the closest thing to an “official information technology plan.”

- b. If “Yes,” also provide complete bibliographic information about the plan; when was it published?

The *State of Tennessee Information Systems Plan* is a yearly document. It is produced by the Department of Finance and Administration and is located at:

<http://www.state.tn.us/finance/oir/prd/tennplan.htm>

- c. If “No,” skip this whole section.

Additional comments:

2. The technology plan covers which branches?

- Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

- a. Briefly explain your answer and cite to applicable statutes/regulations.

The Plan largely focuses on state administrative agencies, particularly in the sections wherein each agency reports on its activities and future plans. However, the larger policy goals and overviews in the Plan appear to encompass all of state government, not just executive agencies. See <http://www.state.tn.us/finance/oir/prd/chpt1.pdf>.

Additional comments:

3. Does the current plan include a section on permanency and public accessibility of electronic government information?

- Yes
 No

- a. If “Yes,” cite to and provide relevant language of the plan.

“Goal: Tennessee will provide government agencies and citizens electronic access to accurate and timely information and services by efficiently managing data as a vital and valued state asset. *2001-2002 State of Tennessee Information Systems Plan*, p. 1-5, located at:

<http://www.state.tn.us/finance/oir/prd/chpt1.pdf>

Additional comments:

Although the plan addresses public accessibility of electronic information, it does not address **permanent** public access.

4. Discuss any unique circumstances in your state relevant to technology planning or the current information technology plan.

F. STATE PRINTING OFFICE AND STATE PRINTER

1. Does your state have an official printing office (or equivalent) and/or an official printer (or equivalent)?

Yes
 No

- a. If “Yes,” provide the complete official name for the printing office and/or official printer; cite to the statute giving that information.

There are two different agencies officially charged with printing and publishing by the state Code and Constitution. In addition, there are other in-house printing offices run by the state government which are not officially charged to print or publish. I will deal in more depth with the two agencies/offices officially charged to print and publish, and mention the other in-house agencies in passing.

1. The **Department of General Services** is given “charge and supervision” of all government printing. TENN. CODE ANN. § 12-5-102 (1999). The Printing Division of the Department of General Services has been established in response to this charge.

2. The **Tennessee Secretary of State** is also charged with compiling and printing the official Tennessee rules and regulations promulgated by each agency (TENN. CODE ANN. § 4-5-220(d)), and the Tennessee Administrative Register (TENN. CODE ANN. § § 4-5-220(a)). The Tennessee Constitution mandates that the Secretary of State keep a register of the Acts of the General Assembly (Tenn. Const. art. III § 17). The Publications Division of the Department of State has been established in response to these charges.

- b. If “No,” skip this whole section.

Additional comments:

The **Printing Division of the Department of General Services** offers traditional printing services, graphic design services, some digital services, such as receiving straight-to-press digital files and designing Flash files for government web pages. State of Tennessee Printing Division home page, located at: http://www.state.tn.us/generalserv/ba09p/index_home.html

Although the Department of General Services is given charge of **all** government printing by the Tennessee Code, and the Secretary of State is charged with publishing some specific additional materials (described above), there are also additional in-house “print shops” used by different branches and agencies. The “Capitol Print Shop” does printing for the state legislature³ and prints the documents of the Publication Services Division of the Secretary of State. The Publication Services Division provides the documents to the Capitol Print Shop in camera-ready format, and the Capitol Print Shop just does the printing itself.⁴

³ Telephone interview with Susie Lankford, Information Resource Support Specialist, Printing Division of the Tennessee Department of General Services (June 7, 2002).

⁴ Telephone interview with Shawna Gaw, Assistant Director for the Division of Publications, Tennessee Secretary of State (May 30, 2002).

2. Cite the “enabling” statute that created and defines the powers/responsibilities of the printing office/official printer.

TENN. CODE ANN. § 12-5-102 (1999); TENN. CODE ANN. § 4-3-1105(7) (1999). Also see question 1, above, for information regarding the publication duties of the Secretary of State.

Additional comments: The Division of Publications of the Department of State is responsible for publishing, both in print and on-line, the Tennessee Acts, Official Compilation of Rules and Regulations, Tennessee Administrative Register⁵, the Tennessee Blue Book⁶, and the Tennessee Open Appointments Vacancy Report.

3. Does the printing office/official printer have power to promulgate administrative regulations?

Yes
 No

a. If “Yes,” cite the body of administrative regulations promulgated by the printing office/official printer.

Additional comments:

Although the Printing Division cannot promulgate official regulations on its own, the Department of General Services could promulgate regulations for the Printing Division. However, it has not done so. Similarly, the Publications Division of the Secretary of State cannot promulgate its own regulations, but the Secretary of State could promulgate regulations regarding that Division. Again, the Secretary of State has not done so.

4. The printing office/official printer has jurisdiction over which branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

“The department of general services has entire charge and supervision of all printing done for each and every department or branch of government of the state, including all departmental offices and all charitable, penal, educational or reform institutions.” TENN. CODE ANN. § 12-5-102 (1999).

Additional comments:

5. Briefly discuss the functions of the printing office/official printer.

The Printing Division prints forms, brochures, newsletters, annual reports, manuals, posters, etc. It also provides typesetting, layout and design, photography, and scanning services. Printing

⁵ The Tennessee Administrative Register is analogous to the *Federal Register*.

⁶ A manual of Tennessee state government with information on elected officials, the branches and agencies of state government, historical information, statistical data, and election returns.

Division also creates and improves state government web pages on request. The Publications Division, as mentioned above, ensures that the Tennessee Acts, Official Compilation of Rules and Regulations, Tennessee Administrative Register, Blue Book, and Open Appointments Vacancy Report are published, both in print and on-line. The Publications Division also sends a reminder letter to each agency which publishes an annual report, reminding the agency of their obligation to distribute the report according to the State Depository Library Program⁷ (see section I below). Then:

- a. Describe your state's use of in-house agency publishing and/or commercial publishing of government information.

The state uses commercial publishers for the *Tennessee Code Annotated*, and for published case opinions. The legislature and the Department of State's Publication Division use the Capitol Print Shop, a printing and graphic design shop run by the state government. The Tennessee Department of Transportation and the Tennessee Wildlife Resources Agency have their own in-house print shops to handle their specialized needs. The rest of the state agencies utilize the Printing Division of the Department of General Services, except in rare instances when commercial printers must be used because the needs of the agency cannot be met by the equipment that the Printing Division possesses.⁸

- b. What percentage of official state government documents are printed by the printing office/official printer?

The exact percentage is not known, but it is believed that the use of commercial printing services is rare. See item "a" above.

- c. To what extent is the printing office/official printer involved in the electronic dissemination of government information?

The Printing Division may create web pages that are used to disseminate government information, but its personnel do not participate in decisions as to what materials should be disseminated in the first place.⁹ The Publications Division of the Tennessee Secretary of State creates and maintains web pages and databases of the Tennessee Acts, the Tennessee Blue Book, Rules and Regulations, the Tennessee Administrative Register, and the Tennessee Open Appointments Vacancy Report.¹⁰

Additional comments:

6. Are the powers/responsibilities of the printing office/official printer defined differently for electronic government information vis-à-vis print government information?

Yes

⁷ Telephone interview with Shawna Gaw, Assistant Director for the Division of Publications, Tennessee Secretary of State (May 30, 2002).

⁸ Telephone interview with Susie Lankford, Information Resources Support Specialist, Printing Division of the Tennessee Department of General Services (June 7, 2002).

⁹ Telephone interview with Susie Lankford, Information Resources Support Specialist, Printing Division of the Tennessee Department of General Services (June 7, 2002).

¹⁰ Telephone interview with Shawna Gaw, Assistant Director for the Division of Publications, Tennessee Secretary of State (May 30, 2002).

No

- a. If "Yes," cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

7. Do applicable statutes/regulations for the printing office/official printer set forth powers/responsibilities relating to "permanent public access" of government information?

Yes

No

- a. If "Yes," cite to and discuss any provisions/regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

8. Does any relevant source of law acknowledge in any way the state's responsibility to permanently maintain government information?

Yes

No

- a. If "Yes," briefly discuss that recognition; cite to and provide relevant language.

Although there is no one statute in Tennessee acknowledging a policy or responsibility to permanently maintain public records, the statutory scheme, as a whole, favors it, with the exception of legislative records. No public record, other than legislative records, may be destroyed without the unanimous consent of the Public Records Commission. TENN. CODE ANN. § 10-7-303(d) (1999 & Supp. 2001). Also see the Tennessee Office for Information Resources Information Technology Policy 12.00, which reads "The State of Tennessee will aggressively and cost-effectively use information technology, as well as emerging technologies, in order to provide efficient, effective, equal, and universal citizen access to public information as defined by law." (Available at <http://www.state.tn.us/finance/oir/policy/p12.htm>).

Additional comments:

9. Whether or not a supporting source of law can be identified, does the printing office/official printer acknowledge responsibility to permanently maintain government information?

Yes

No

- a. If "Yes," briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Although there is no legal responsibility on the part of the Publications Division to permanently maintain government information, they are committed to maintaining archives of the web-based material that they produce, such as the Tennessee Acts.¹¹

Additional comments:

10. Has the printing office/official printer undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

The Publications Division of the Department of State has undertaken to maintain web-based archives of much of the web-based material that they produce on a permanent basis. For example, the Tennessee Public Acts and the Tennessee Private Acts are made available on the web, and all chapters of the Acts that are originally published on the web will remain there rather than being removed at some point.¹² This project has greatly increased the accessibility of Tennessee Acts in two ways. First, not many libraries held the Acts when they were only published in paper. Even in Tennessee, someone who wanted to view the Acts might have to drive over 100 miles to see the nearest copies. Second, the time within which the Acts are available after passage has been dramatically lessened. Instead of having to wait several weeks to receive the printed copies, libraries and researchers can now access them almost immediately.

Additional comments:

11. Has any litigation involving the printing office/official printer resulted from the state’s failure to “permanently” maintain government information?

Yes
 No

a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the official printing office and/or official printer.

G. STATE ARCHIVES AND STATE ARCHIVIST

¹¹ Telephone interview with Shawna Gaw, Assistant Director for the Division of Publications, Tennessee Secretary of State (May 30, 2002).

¹² Telephone interview with Shawna Gaw, Assistant Director for the Division of Publications, Tennessee Secretary of State (May 30, 2002).

This section addresses your state's official archives and state archivist. If these responsibilities are by law under the auspices of your state library and state librarian, please move on to Section H.

See Section H.

1. Does your state have an official archives (or equivalent) and/or an official archivist (or equivalent)?

Yes
 No

- a. If "Yes," provide the complete official name for the archives and/or archivist; cite the statute giving that information.
- b. If "No," skip this whole section.

Additional comments:

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the archives/archivist.

Additional comments:

3. Does the archive/archivist have power to promulgate administrative regulations?

Yes
 No

- a. If "Yes," cite the body of administrative regulations promulgated by the archive/archivist.

Additional comments:

4. The archive/archivist has defined responsibilities for which branches?

Executive
 Legislative
 Judicial
 Administrative (applying to all agencies, no matter what branch of government)
 Other

- a. Briefly explain your answer and cite to applicable statutes/regulations.

Additional comments:

5. Briefly discuss the functions of the archive/archivist.

Additional comments:

6. Are the powers/responsibilities of the archive/archivist defined differently for electronic government information vis-à-vis print government information?

Yes
 No

- a. If “Yes,” cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

- 7. Do applicable statutes/regulations for the archive/archivist set forth powers/responsibilities relating to “permanent public access” of government information?

Yes
 No

- a. If “Yes,” cite to and discuss any provisions /regulations that address those powers/responsibilities; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

- 8. Does any relevant source of law acknowledge in any way the state’s responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss that recognition; cite to and provide relevant language.

Additional comments:

- 9. Whether or not a supporting source of law can be identified, does the archive/archivist acknowledge responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

Additional comments:

- 10. Has the archive/archivist undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

Additional comments:

- 11. Has any litigation involving the archive/archivist resulted from the state’s failure to “permanently” maintain government information?

Yes
 No

- a. If "Yes," briefly discuss the circumstances of each case and its outcome, and provide citations to any court decisions.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the official archive and/or official archivist.

H. STATE LIBRARY AND STATE LIBRARIAN

This section addresses your state's official library and state librarian. There is no separate section that addresses the official law library and state law librarian, if any. If your state has an official library *and* an official law library (and/or official librarian *and* official law librarian), it may be appropriate to address those government entities and/or persons separately.

1. Does your state have an official library (or equivalent) and/or an official librarian (or equivalent)?

Yes
 No

- a. If "Yes," provide the complete official name for the library and/or librarian; cite to the statute giving that information. State Library and Archives; State Librarian and Archivist. TENN. CODE ANN. § 10-1-201 (1999).
- b. If "No," skip this whole section.

Additional comments:

The statute cited above refers only to the official name for the state librarian. There is no statute officially naming the State Library and Archives; however, it is referred to as such throughout the applicable parts of the Code (TENN. CODE ANN. §§ 10-1-101 to 10-1-204 (1999)).

2. Cite the "enabling" statute that created and defines the powers/responsibilities of the library/librarian. TENN. CODE ANN. § 10-1-101 creates the State Library and Archives as a division within the Department of State. The functions and responsibilities of the library and archives (or, more technically speaking, the functions and responsibilities of its managing board, which is directed to act through the State Library and Archives) are set forth in TENN. CODE ANN. § 10-1-104 to 112. TENN. CODE ANN. § 10-1-101 creates the office of the State Librarian and Archivist and sets forth some very basic duties and powers.

Additional comments:

3. Does the library/librarian have power to promulgate administrative regulations?

Yes
 No

- a. If "Yes," cite the body of administrative regulations promulgated by the library/librarian.

Additional comments:

Since the State Library and Archives is a division of the Department of State, the Department of State could promulgate regulations with respect to it. However, the Department of State has not done so.

4. The library/librarian has defined responsibilities for which branches?

- Executive
- Legislative
- Judicial
- Administrative (applying to all agencies, no matter what branch of government)
- Other

a. Briefly explain your answer and cite to applicable statutes/regulations.

The State Library and Archives has broadly defined duties but they are not attached to specific branches of government. For example, the State Library and Archives has as one of its functions “[t]he collection and preservation of archival material and materials of historical, documentary and reference value . . . as may be considered . . . of special interest to the citizenship of Tennessee.” TENN. CODE ANN. § 10-1-104(a)(1) (1999).

Additional comments:

5. Briefly discuss the functions of the library/librarian.

The State Library and Archives is directed to collect and preserve items of archival value, as noted above; to distribute state publications (TENN. CODE ANN. § 10-1-104(a)(2)), to collect and distribute reference materials to state employees and public agencies (TENN. CODE ANN. § 10-1-104(a)(3)), to encourage library development throughout the state (TENN. CODE ANN. § 10-1-104(a)(4)), to plan and conduct a library program for the blind and physically handicapped (TENN. CODE ANN. § 10-1-110), and to contract with an existing agency for the appropriate collection, preservation, and display of materials deemed of special interest to “the black citizens of Tennessee.” TENN. CODE ANN. § 10-1-111.

Additional comments:

The State Librarian and Archivist is also empowered to inspect all government records, determine whether they have archival value, and if they have been classified as confidential, determine that they designation was in error. TENN. CODE ANN. § 10-7-508 (1999).

6. Are the powers/responsibilities of the library/librarian defined differently for electronic government information vis-à-vis print government information?

- Yes
- No

a. If “Yes,” cite to and briefly discuss applicable statutes/regulations addressing electronic government information; how is it treated differently?

Additional comments:

7. Do applicable statutes/regulations for the library/librarian set forth powers/responsibilities relating to “permanent public access” of government information?

Yes
 No

- a. If “Yes,” cite to and discuss any provisions/regulations that address those powers/responsibilities ; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

However, see the additional comments in section 5 above.

8. Does any relevant source of law acknowledge in any way the state’s responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss that recognition; cite to and provide relevant language.

Although there is no one statute in Tennessee acknowledging a policy or responsibility to permanently maintain public records, the statutory scheme, as a whole, favors it, with the exception of legislative records. No public record, other than legislative records, may be destroyed without the unanimous consent of the Public Records Commission. TENN. CODE ANN. § 10-7-303(d) (1999 & Supp. 2001). Also see the Tennessee Office for Information Resources Information Technology Policy 12.00, which reads “The State of Tennessee will aggressively and cost-effectively use information technology, as well as emerging technologies, in order to provide efficient, effective, equal, and universal citizen access to public information as defined by law.” (Available at <http://www.state.tn.us/finance/oir/policy/p12.htm>).

Additional comments:

9. Whether or not a supporting source of law can be identified, does the library/librarian acknowledge responsibility to permanently maintain government information?

Yes
 No

- a. If “Yes,” briefly discuss when and how that responsibility was acknowledged; cite to any supporting source of law.

The State Library and Archives believes it has a responsibility to permanently maintain government information, records, and materials deemed to be of permanent or archival value, and will do so to the best of its ability given funding constraints.¹³

¹³ Telephone interview with Jane Pinkston, Assistant State Librarian for Planning and Development, Tennessee State Library and Archives (May 31, 2002).

Additional comments:

10. Has the library/librarian undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

The State Library and Archives has recently acquired a digital archive writer and associated software. They will be collecting all of the state agency government documents and publications that were formerly published and archived in print format, but that are now published in electronic format, and archiving them permanently and making them accessible. They will convert these documents to durable microform that can be indexed, retrieved, redigitized, and delivered on request. While patrons will not have direct remote access to these archives, someone could, for example, email a state librarian with a request for a copy of the annual report of the Department of Housing from 2002. The librarian could then quickly retrieve it from the archive, automatically redigitize it in whatever format the patron requested (.pdf, Word, WordPerfect, HTML, etc.), and email it to the patron, all within a matter of just a few minutes. As of December 2002, all of the equipment and software necessary for this project has been acquired and staff at the State Library and Archives have been trained on using it. They are still working on a few minor technical issues but expect the system to be ready to go fairly soon. The one remaining issue that they see as still requiring resolution is finding the best way to make sure that they locate all of the government documents and publications that should be archived, since the various state agencies do not necessarily always notify the State Library and Archives of their publications, let alone deliver them to the State Library and Archives.¹⁴

Additional comments:

11. Has any litigation involving the library/librarian resulted from the state’s failure to “permanently” maintain government information?

Yes
 No

- a. If “Yes,” cite to and briefly discuss each case.

Additional comments:

12. Discuss any unique circumstances in your state relevant to the state library and/or state librarian.

I. STATE DEPOSITORY LIBRARY LAWS

¹⁴ Telephone interview with Wayne Moore, Assistant State Archivist, Tennessee State Library and Archives, December 13, 2002.

States often have a depository library program patterned after the federal model for disseminating federal government publications.

1. Does your state have a “depository library program,” as referred to in the paragraph above?

Yes
 No

a. If “Yes,” cite your state’s depository library law statutes and the administrative regulations that supplement them.

TENN. CODE ANN. §§ 12-6-107 TO 12-6-119 (1999).

b. If “No,” skip this whole section.

Additional comments:

The statute describing the documents to be distributed via the Depository Library program refers to “[s]uch other reports or statements as may be published under the authority of the state, or any official thereof.” TENN. CODE ANN. § 12-6-108(3). This language could be interpreted broadly, but as a matter of practice it appears to have been construed to mean only annual reports from state agencies. There are no cases, attorney general opinions, or legislative intent materials to shed additional light on what, precisely, this language was intended to mean.

2. Do the depository library statutes/regulations address electronic government information separately vis-à-vis print government information?

Yes
 No

a. If “Yes,” cite to and briefly discuss statutes/regulations addressing electronic government information; how is it treated differently?

The secretary of state is authorized to fulfill the duty of distributing the Acts of the State of Tennessee by publishing them on the Internet. TENN. CODE ANN. § 12-6-116 (1999). Copies of the House and Senate Journals may be distributed in electronic format rather than in print. TENN. CODE ANN. § 12-6-119 (1999).

b. If “No,” explain whether or not the statutes/regulations have been construed to cover electronic government information?

Additional comments:

Apart from the one instance cited above, electronic government information is treated the same as print government information in the Depository Library Program. The people charged with administering the program understand their responsibility to acquire and distribute electronic government publications – the issue may lie with the understanding of the state agencies involved

(some of them do not appear to understand their responsibility to deliver such electronic materials to the state Depository Library Program).

3. Do any depository library statutes/regulations assure “permanent public access” of electronic government information?

Yes
 No

- a. If “Yes,” cite to and discuss any provisions/regulations that address “permanent public access”; cite to any other source of law supplementing them: attorney general opinions, court decisions, administrative rules or guidelines.

Additional comments:

Although it is not specifically addressed, the state Depository Library Program should ensure permanent public access to electronic government materials, if administered properly. Two copies of all government materials included in the ambit of the program must be furnished to the depository libraries (TENN. CODE ANN. § 12-6-110), and the librarians at the receiving libraries are charged with “carefully” preserving them. One copy is to be lendable while the second must remain on the library premises. TENN. CODE ANN. § 12-6-112.

4. Do the depository library statutes/regulations or any other source of law supplementing them (particularly a declaration of legislative intent or a relevant attorney general opinion) declare the public policy of the state and address the scope of citizens’ access to government information or acknowledge the state’s responsibility to permanently maintain public records?

Yes
 No

- a. If “Yes,” cite to and provide relevant language.

Additional comments:

5. Have depository libraries as a whole undertaken any special initiatives or projects involving “permanent public access” of government information?

Yes
 No

- a. If “Yes,” briefly describe those special initiatives or projects; discuss their effectiveness and actual accomplishments.

See discussion in Section H, above, of digital archiving project.

Additional comments:

6. Please determine the absolute number or percentage of titles:

Formerly distributed in print, now distributed exclusively in electronic format.
 Never before distributed, now distributed in electronic format.

Additional comments:

It would be impossible to determine this without surveying each department, agency, and commission of state government. Except for a very few titles, whether a particular document is distributed via the Depository Library program is determined on a case-by-case basis. TENN. CODE ANN. § 12-6-118 (1999). The only documents that are required to be distributed via the Depository Library program are the acts and journals of the General Assembly, Supreme Court cases, and annual reports from state agencies (see discussion above regarding the general interpretation of the statutes). There is anecdotal knowledge of some documents formerly distributed in print which are currently only being distributed in electronic format. One example is the Tennessee Blue Book, which is ordinarily produced in print but is currently only available in electronic format, because the state legislature has refused to authorize funding for it to be printed.¹⁵ Another example is the Department of Housing's Annual Report, which was required to be distributed (in print) to Depository Libraries. Instead, this Report was posted on the Department's web page, then later removed from the web page. Investigation to determine whether the Department of Housing fulfilled its Depository Library program obligation by distributing it in print to the depository libraries is ongoing.¹⁶

7. Discuss the depository library program's effectiveness and actual accomplishments in disseminating, preserving and providing access of electronic government information?

The only materials that are officially distributed electronically as part of the Depository Library program are the Acts of the State of Tennessee. Making these available via the Internet has dramatically increased their availability to the citizens of Tennessee and, in fact, the world.

Additional comments:

J. COOPERATIVE ARRANGEMENTS

One can imagine any number of cooperative arrangements to assure "permanent public access." A well-known example is the partnership between the Texas Electronic Depository program (involving the Texas State Library and Archives Commission) and the University of North Texas Libraries (see description for program C304 at Computers in Libraries 2002 on the Information Today website). A hypothetical example of a less formalized cooperative arrangement is where a state's highest court relies on the state bar association to publish the court's decisions.

1. To secure PPA, has any state agency or other government entity (judicial, legislative or executive) partnered with any not for profit, educational, or for profit organization outside of government?

Yes
 No

Tennessee government agencies have formed some partnerships with non-governmental entities in order to publish or provide access to government materials (some of those partnerships

¹⁵ Telephone interview with Shawna Gaw, Assistant Director for the Division of Publications, Tennessee Secretary of State (May 30, 2002) and Division of Publications web page regarding the Blue Book, located at: <http://www.state.tn.us/sos/blue.htm>

¹⁶ Telephone interview with Shawna Gaw, Assistant Director for the Division of Publications, Tennessee Secretary of State (May 30, 2002).

revolve around electronic materials, others around non-electronic materials). However, not all of these partnerships are necessarily concerned with assuring **permanent** public access to those government documents and publications.

- a. If "Yes," describe each partnership, noting whether it is funded by a grant or through a government appropriation; give a brief history and summary of accomplishments.

The Tennessee Courts allow the Tennessee Bar Association to make their opinions available over the Internet. However, these are not available to the general public. Another partnership is between the Business Services Division of the Secretary of State and NIC to provide searchable databases of business records and business name availability for corporations formed or registered in Tennessee. These databases came on line last year and are maintained separately from the main state web page.¹⁷ Another partnership has recently been formed between the State Administrative Procedures Division and the University of Tennessee College of Law Library to publish and archive the decisions of state administrative law judges. This most recent partnership has been agreed to orally and is in the planning stages. We hope to start publishing and archiving decisions in early January 2003, and we are currently planning to make these decisions available permanently. At least for the immediate future, the hardware (servers, etc.), software, and personnel for indexing and uploading the decisions, as well as maintaining the databases and web-based access, will be provided by the University of Tennessee, without any separate funding from a grant or particular government allocation.

Additional comments:

2. Does the state rely on any cooperative activities that are not actually formalized?

Yes
 No

- a. If "Yes," describe each relationship and cooperative activity; give a brief history and a summary of accomplishments. The partnership between the University of Tennessee and the State Administrative Procedures Division, described above, has not been formalized, and may not be.

Additional comments:

3. Does any state agency or other government entity secure "permanent public access" through any other type of cooperative arrangement?

Yes
 No

- a. Describe each cooperative arrangement; give a brief history and a summary of accomplishments.

Additional comments:

K. FACTORS TO BE CONSIDERED IN FUTURE ADVOCACY OR REFORM EFFORTS

¹⁷ Telephone interview with Shawna Gaw, Assistant Director for the Division of Publications, Tennessee Secretary of State (May 30, 2002).

1. If “permanent public access” is neglected in your state, carefully examine existing public records statutes, freedom of information statutes, public access laws, etc., and respond to the following:
 - a. If possible, cite to and discuss one or two specific places in statutes or other sources of law where the state legislature or a responsible agency might naturally insert basic reform language.

Title 10, chapter 7, part 3 of the Tennessee Code Annotated seems the most natural place for reform language. This part, which governs the disposition and preservation of government records, was recently amended to remove the legislature from its ambit. This amendment effectively allows the legislature to destroy any of their records without review or restraint. I believe it should be amended back to the original language. Also, the part defines “permanent records”¹⁸ and “records of archival value”¹⁹ but fails to specify that any effort should be taken to make sure that they are preserved.²⁰ In fact, the part defines these types of records and then makes no use of the defined terms anywhere in the part. It seems logical to define permanent records and archival records and then mandate that permanent and archival records should, in fact, be kept permanently and made available permanently rather than destroyed. Section 10-7-303, which states that no records shall be scheduled for destruction without the unanimous approval of the Public Records Commission, could be amended to state that no records determined to be of permanent or archival value may be destroyed. Also, the Public Records Commission could issue regulations ensuring that the definition of a “record” is a broad one encompassing many different formats. Such amendments would address the permanency of at least some government information and publications. Public access is addressed through § 10-7-503, which appears to be a strong mandate for public access to existing public records and does not, in my opinion warrant any revision or supplementation.

- b. If specific places to insert reform language are not obvious, very briefly discuss what state agency or other government entity might naturally be made responsible for “permanent public access.”

Additional comments:

2. Discuss known failed efforts in your state to achieve “permanent public access”; how might new efforts succeed?

Additional comments:

The most recent legislative foray into the area of preserving government documents for the public was a successful attempt by the legislature to ensure that it does not have to preserve its own documents. Given that, I am hesitant to state that I think any plan requiring legislative involvement would be successful, as they seem actively hostile, rather than receptive, to

¹⁸ Permanent records are “those records which have permanent administrative, fiscal, historical or legal value.” TENN. CODE ANN. § 10-7-301(5) (1999).

¹⁹ Records of archival value means “any public record which may promote or contribute toward the preservation and understanding of historical, cultural, or natural resources of the state of Tennessee.” TENN. CODE ANN. § 10-7-301 (10) (1999).

²⁰ I should point out that despite this failure, the State Library and Archives understands its mandated role and responsibility to collect, preserve, and make accessible government records and documents to the public. Telephone conversation with Wayne Moore, Assistant State Archivist, Tennessee State Library and Archives, December 13, 2002.

preserving public records. I do think that a more proactive and concerned Public Records Commission could issue regulations and work more closely with state agencies to safeguard government records and publications, and that this body might be a more effective means of patching current loopholes in public access and preservation laws than the state legislature currently is.

L. DIRECTORY

This section asks you to collect directory-type information for important state officials involved in the dissemination of government information.

Provide official contact information for:

1. State Chief Information Officer (or equivalent)

Richard Rognehaugh
Deputy Commissioner and Chief Information Officer
Office for Information Resources
Department of Finance and Administration
State Capitol, Nashville TN 37243
(615) 741-3700 (tel)

2. State Printer –

Leroy Richmond, Director
Printing Division
Department of General Services
Tennessee Tower, 24th Floor
312 8th Ave. North, Nashville TN 37243
(615) 741-4199 (tel)

3. State Archivist (see no. 4)
4. State Librarian and/or State Law Librarian

Edwin S. Gleaves
State Librarian and Archivist
Tennessee State Library and Archives
403 7th Ave. North
Nashville TN 37243
(615) 741-7996 (tel)

5. State Attorney General (on freedom of information act issues, etc.)

Paul G. Summers
State Attorney General
425 5th Ave. North
Nashville TN 37243

(615) 741-3491 (tel)

M. IMPORTANT STATE RESOURCES

Provide URLs or other finding information for:

1. Official state home page - <http://www.state.tn.us/>
2. State agency portal - <http://www.tennesseeanytime.org/main/government/directory/index.html>
 - a. Does the portal have a searching capability similar to FirstGov? – It does have a searching capability but it is not very accurate or reliable.
3. Legislative website - <http://www.legislature.state.tn.us/>
 - a. Does the website cover the current year only? The website has certain materials archived from 1999 on, and complete materials for the current year.
 - b. Are services free or fee-based? Free.
4. Judicial websites
General judicial home page: <http://www.tennesseeanytime.org/main/justice/courts.html>
Tennessee Supreme Court opinions -- <http://www.tsc.state.tn.us/opinions/tsc/oplsttsc.htm>
Tennessee Court of Appeals opinions -- <http://www.tsc.state.tn.us/opinions/tca/oplsttca.htm>
Tennessee Court of Criminal Appeals opinions --
<http://www.tsc.state.tn.us/opinions/tcca/oplstcca.htm>
Tennessee Administrative Office of the Courts -- <http://www.tsc.state.tn.us/>
5. Regulatory agency websites – State agency links can be found at:
<http://www.tennesseeanytime.org/main/government/directory/agencies.html>
Another helpful website is the State Division of Administrative Procedures website, which provides information regarding proceedings before commissions, boards, and administrative law judges. It is located at:
<http://www.state.tn.us/sos/procede.htm>
6. Freedom of Information Service Hotline
 - a. Does the state have an ombudsman for freedom of information act issues? – No
 - b. Is the state attorney general's office the public's contact for freedom of information act issues? -
No